

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOYCE H. BUSBY)	
Claimant)	
VS.)	
)	Docket No. 256,166
OSAGE COUNTY)	
Respondent)	
AND)	
)	
KANSAS WORKERS RISK COOPERATIVE FOR COUNTIES)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the October 31, 2000 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

This is a claim for a January 7, 1999 accident and alleged injuries to the head, neck and both arms. After conducting a preliminary hearing on October 30, 2000, Judge Avery found that claimant had proven that the present need for medical treatment for her neck was related to the January 1999 accident. The Judge, therefore, granted claimant's request for temporary total disability and medical benefits.

Respondent and its insurance carrier contend Judge Avery erred. They argue that the evidence fails to prove that claimant injured her neck in the January 1999 accident and, therefore, the preliminary hearing Order must be reversed "in order to preserve the integrity of the workers' compensation system."

The only issue before the Board on this review is whether claimant's present need for medical treatment for her neck was caused by, or is directly related to, her January 7, 1999 fall while working for respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

1. For the reasons explained below, claimant has failed to prove that her present neck problems were caused or aggravated by the January 7, 1999 accident and, therefore, the preliminary hearing Order should be reversed.
2. On January 7, 1999, claimant slipped and fell on ice while working for respondent as a certified nurse's assistant and a home health aide. Contrary to her preliminary hearing testimony that she landed on her back, hips, and elbow, claimant initially reported that she only landed on her left elbow and left hip when she fell.
3. Claimant immediately sought treatment for her left elbow from her family physician, Dr. Nelson White. Dr. White treated claimant's elbow through January 27, 1999, when he noted that claimant was released to return to work. The doctor's notes from that treatment do not indicate that claimant had any neck complaints.
4. Dr. White did not see claimant again until August 24, 1999, when he diagnosed claimant as having carpal tunnel symptoms in the right hand radiating up into her neck. At that time, the doctor also diagnosed cervical strain and cervical myofasciitis and referred claimant to a neurologist, Dr. Wade B. Welch, for an EMG. The EMG indicated that claimant had moderate carpal tunnel syndrome on the right and mild carpal tunnel syndrome on the left. Dr. White then referred claimant to another doctor for carpal tunnel surgery. Following surgery, claimant returned to work on light duty and later returned to regular duties.
5. Dr. White saw claimant again on September 28, 1999; October 27, 1999; November 10, 1999; December 22, 1999; and May 1, 2000. The doctor noted in his records that the September visit was a consultation concerning claimant's medications, but the other appointments were to treat sinus drainage and sinus infections. The medical notes from those treatments do not indicate that claimant had any neck complaints other than symptoms from her glands.
6. On May 8, 2000, Dr. White noted that claimant had head and face pain and that she was again being referred to the neurologist for tests. On May 23, 2000, the doctor noted that claimant came in for right face and neck pain. At or around this time, claimant underwent an MRI of her head, which was normal, and an MRI of the cervical spine, which showed mild degenerative changes and a mild left C5-6 paracentral bulge. On June 8, 2000, Dr. White noted that claimant had symptoms from a C4-5 cervical disc.
7. Dr. Welch's letter to Dr. White dated May 22, 2000, states that claimant had constant right sided occipital headaches since March of that year and that she had noticed some discomfort in the right side of her neck. That letter does not mention the January 1999 accident. But Dr. Welch's June 5, 2000 notes indicate that claimant's symptoms were worsening as she was then experiencing significant neck pain radiating to the right side. At that visit, the doctor noted that claimant and her husband were wondering if the January 1999 fall might be related to her condition. The medical notes read:

The patient is a 45-year-old here in follow-up for protracted right sided headaches with neck pain and fluctuating neurologic symptoms. Sed rate was 16. MRI of the head without gadolinium was normal. MRI of the C-spine showed mild left C5-6 paracentral bulge per report. The patient continues to require OxyContin for her pain. She actually had to go [to] the emergency room last night and was extremely nauseated. She has significant neck pain radiating to the right side. She and her husband wonder about cause or relationship between headaches and a fall on ice in which she injured her elbow in January of 1999. She was treated for sinusitis at that time as well. She has not had progressive persistent weakness, numbness or incoordination.

8. On June 12, 2000, claimant saw Dr. Florin O. Nicolae, a pain management specialist, who diagnosed post-traumatic right cervical facet syndrome and complex regional pain syndrome of the right face, depression and anxiety. The doctor recorded the following history in a June 12, 2000 report:

. . . she [claimant] is a 45 year-old woman complaining of chronic headache and neck pain, right more than left. Her symptoms started in January of 1999 following a fall on ice during which she thinks she may have injured her head and neck area. The pain has become continuous recently and has increased significantly since April of 2000.

9. At the preliminary hearing, respondent and its insurance carrier introduced an October 29, 2000 letter from Dr. Steven L. Hendler. After reviewing claimant's medical records and the symptoms and complaints noted in those records, Dr. Hendler concluded that it is not likely that claimant's January 1999 fall caused claimant's present neck problems.

10. Based upon the present record, the Board finds and concludes that the evidence fails to establish that it is more probably true than not that claimant's present symptoms and present neck problems were caused or aggravated by the January 1999 accident. Claimant has a long history of sinus problems that produced head and neck pain. The evidence indicates that claimant did not experience any additional neck symptoms or problems for many months after the January 1999 accident. The evidence also indicates that it was either March or April 2000 when claimant began experiencing increased head and neck symptoms. Claimant believes the January 1999 fall is the cause of her increased symptoms as that is the only serious incident that she can remember that occurred anywhere close in time to her increased symptoms. Claimant testified, in part:

Q. (Judge Avery) . . . do you believe that your current symptoms are somehow related to your fall in January of '99?

A. (Claimant) Yes, I do.

Q. Can you explain to me in your own words why you believe that's true?

A. Well, I've sought medical attention when we thought the problem was sinus. I was told by the doctor, it was an ENT, ear, nose and throat specialist, that he felt like with all the antibiotics that I'd been taking that there was no way it could be infection. He requested MRI at that time, found that there was bulging disc and the only serious fall that I had taken anywhere close to that time before these severe pains started was the fall in January of '99 where I actually went backwards where there was a chance that or was anything that would have caused a neck problem.¹

The Board is aware that Dr. White relates claimant's present neck symptoms to the January 1999 fall. But a careful review of the doctor's June 15, 2000 letter to respondent indicates that Dr. White's opinion is founded upon claimant's statement that she sustained injury to her head and neck when she fell, which appears contrary to the contemporaneous medical records. The Board is presently persuaded by Dr. Steven L. Hendler's analysis and opinion that it is not likely that the January 1999 accident caused claimant's neck problems. Therefore, the request for benefits should be denied.

WHEREFORE, the Board reverses the October 31, 2000 preliminary hearing Order entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of January 2001.

BOARD MEMBER

c: James L. Wisler, Topeka, KS
Ronald J. Laskowski, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director

¹ Preliminary Hearing, October 30, 2000; pp. 42, 43.